

**FILED**

JUN 27 2012

  
CLERK

## IN THE UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF SOUTH DAKOTA

## SOUTHERN DIVISION

PLANNED PARENTHOOD MINNESOTA,	)	Civ. 11-4071-KES
NORTH DAKOTA, SOUTH DAKOTA,	)	
and CAROL E. BALL, M.D.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
DENNIS DAUGAARD, Governor,	)	AMENDED ORDER
MARTY JACKLEY, Attorney General,	)	DISSOLVING IN PART
DONEEN HOLLINGSWORTH, Secretary	)	AND CONTINUING IN PART
of Health, Department of Health, and	)	THE PRELIMINARY
ROBERT FERRELL, M.D., President,	)	INJUNCTION
Board of Medical and Osteopathic	)	
Examiners, in their official capacities,	)	
	)	
Defendants,	)	
	)	
ALPHA CENTER and BLACK HILLS	)	
CRISIS PREGNANCY CENTER,	)	
d/b/a Care Net Pregnancy Resource	)	
Center,	)	
	)	
Intervenors.	)	

On June 30, 2011, after contested motion, this Court entered an Order (Dckt #39) preliminarily enjoining portions of South Dakota H.B. 1217, 2011 Leg. Reg. Sess. (S.D. 2011), which has since been codified at SDCL 34-23A-53 through SDCL 34-23A-62, inclusive ("the Act"). Specifically, the Court enjoined all sections of the Act except Section 5 [now SDCL 34-23A-58]; Subsection 1 of Section 7 [now SDCL 34-23A-53]; and Subsection 5 of Section 9 [now SDCL 34-23A-61]. As described by this Court, the enjoined provisions consist of "essentially four parts": "(1) the Pregnancy Help Center Requirements; (2) the 72-

Hour Requirement; (3) the Risk Factors Requirement; and (4) the Coercion Provisions.” Memorandum Opinion at 2 (Dckt #39).

On March 2, 2012, the Governor of South Dakota signed into law H.B. 1254, 2012 Leg. Reg. Sess. (S.D. 2012). This legislation is scheduled to take effect on July 1, 2012. Collectively, the Act, as amended by the 2012 legislation, is referred to herein as the “Amended Act” and is found in SDCL 34-23A-53 through SDCL 34-23A-62, inclusive.

On May 18, 2012, Plaintiffs filed a “Third Amended Complaint.”

On June 26, 2012, the Plaintiffs, Defendants and Intervenor (“Parties”), by and through their counsel, filed a *Joint Stipulation to Dissolve in Part and Continue in Part the Preliminary Injunction* in the above matter (“Joint Stipulation”). See Docket #\_\_\_\_.

This Court has considered the Joint Stipulation and for all the reasons stated therein, finds good cause to enter an Order consistent with the Joint Stipulation’s terms. It is, therefore, hereby

ORDERED that, pursuant to the Joint Stipulation, the preliminary injunction granted by this Court on June 30, 2011 (Dckt #39) is dissolved in part and continued in part, as described below.

The Court hereby DISSOLVES as moot the preliminary injunction with respect to the following provisions or portions thereof (identified by applicable section of H.B. 1217 (S.D. 2011), as well as its codification):

a) HB 1217, Section 1 (codified at SDCL 34-23A-54) – in its entirety.

b) HB 1217, Section 2 (codified at SDCL 34-23A-55) – in its entirety.

c) HB 1217, Section 3 (codified at SDCL 34-23A-56) – as follows:

- The first sentence in its entirety;
- The portion of the second sentence that reads: “Only after the physician completes the consultation and assessment complying with the provisions of §§ 34-23A-53 to 34-23A-62, inclusive, may the physician schedule a surgical or medical abortion[.]”;
- All of the fourth sentence, except the phrase “as they pertain to the initial consultation”;
- The portions of the fifth sentence (after the comma) that read: “[P]rior to” and “a surgical or medical abortion, the physician shall”; and
- All of subsections (1), (2), (4), (5), (6), (7) and (8) in their entirety.

d) HB 1217, Section 4 (codified at SDCL 34-23A-57)—in its entirety.

e) HB 1217, Section 7 (codified at SDCL 34-23A-53)—all of subsections (2), (3) and (4) in their entirety.

f) HB 1217, Section 8 (codified at SDCL 34-23A-60)—in its entirety.

g) HB 1217, Section 9 (codified at SDCL 34-23A-61)—as follows:

- All of subsections (1), (2) and (3) in their entirety;
- All of subsection (4), *except* the phrase “other than from a pregnancy help center as referenced in §§ 34-23A-56 and 34-23A-57”.

h) HB 1217, Section 10 (codified at SDCL 34-23A-62)—in its entirety.

i) HB 1217, Section 11 (not codified, but contained in 2011 S.D. Sess. Law ch. 161, § 11)—in its entirety.

NOTE: The following sections of HB 1217 were never enjoined by this Court in the June 30, 2011 order, so there is no need to address dissolving the injunction with regard to: Section 5 [now SDCL 34-23A-58] in its

entirety; Section 7, subsection (1) [now SDCL 34-23A-53(1)]; and Section 9, subsection (5) [now SDCL 34-23A-61(5)] .

Provisions of the Amended Act That Continue to be Preliminarily Enjoined.

It is further ORDERED that, pursuant to the Joint Stipulation, the previously entered preliminary injunction is CONTINUED with respect to the following provisions or portions thereof of the Amended Act (identified here by SDCL), pending further adjudication of the Parties' claims and defenses:

a) SDCL 34-23A-56 – as follows:

- The portion of the second sentence that reads: “but in no instance may the physician schedule such surgical or medical abortion to take place in less than seventy-two hours from the completion of such consultation and assessment except in a medical emergency as set forth in § 34-23A-10.1 and subdivision 34-23A-1(5).”;
- The third sentence in its entirety;
- The portion of the fourth sentence that reads: “as they pertain to the initial consultation,”;
- The portion of the fifth sentence (prior to the colon) that reads: “During the initial consultation between the physician and the pregnant mother,” as well as the word “scheduling”;
- In subsection (3), the phrase in the first sentence (before the colon) that reads: “and provide her with written instructions that set forth the following”, as well as all of subsections (3)(a) and (3)(b) in their entirety.

b) SDCL 34-23A-59 – in its entirety.

c) SDCL 34-23A-61 – the phrase within subsection (4) that reads: “other than from a pregnancy help center as referenced in §§ 34-23A-56 and 34-23A-57”.

The provisions of the Amended Act that continue to be preliminarily enjoined by this Order are identified in highlighted and underlined type in Exhibit 1, which was attached to the Joint Stipulation as a representative illustration of the descriptions therein, and is likewise attached to and incorporated in this Order for the same purpose.

Only those provisions of the Amended Act, as amended in 2012, identified above (and illustrated in Exhibit 1 by highlighted and underlined type) continue to be preliminarily enjoined.

Provisions of the Amended Act That Will Be in Effect on July 1, 2012.

All provisions of the Amended Act not preliminarily enjoined by this Order will be in full force and effect on July 1, 2012. These provisions are as follows (and are illustrated in Exhibit 1 with non-highlighted and non-underlined type):

- a) SDCL 34-23A-53, as amended by H.B.1254 (2012), in its entirety;
- b) SDCL 34-23A-54 in its entirety;
- c) SDCL 34-23A-55 in its entirety;
- d) All of SDCL 34-23A-56, as amended by H.B. 1254 (2012), *except* those portions that are enjoined as described above.
- e) SDCL 34-23A-57, as amended by H.B. 1254 (2012), in its entirety;
- f) SDCL §§ 34-23A-58 and 34-23A-58.1 through 34-23A-58.3, inclusive, in their entirety;
- g) SDCL §§ 34-23A-59.1 and 34-23A-59.2 in their entirety;
- h) SDCL 34-23A-60 in its entirety;

- i) All of SDCL 34-23A-61, as amended by H.B. 1254 (2012), *except* the phrase within subsection (4) that reads: "other than from a pregnancy help center as referenced in §§ 34-23A-56 and 34-23A-57" ; and
- j) SDCL 34-23A-62 in its entirety.

It is further ORDERED that this Order becomes effective at 11:59 p.m. on June 30, 2012.

Dated June 27, 2012.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Karen E. Schreier", is written over a horizontal line.

Karen E. Schreier  
Chief Judge